July 9, 2025

VIA ECF
Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Newark, New Jersey 07101

Re: *Khalil v. Trump, et al.*, No. 2:25-cv-1963 (MEF) (MAH)

Dear Judge Farbiarz,

As ordered by the Court during the status conference on July 7, 2025, Petitioner Mahmoud Khalil respectfully provides the following update regarding potentially relevant developments in immigration court.

As of the time of this filing, Mr. Khalil's Motion to Reconsider the June 20 decision and order of the Immigration Judge ("IJ"), ECF 341-1, filed on July 3, remains pending.[1] The U.S. Department of Homeland Security ("DHS") has not responded to the motion, to date.[2]

On July 8, the Executive Office for Immigration Review ("EOIR") rejected Mr. Khalil's Motion to Change Venue, filed concurrently with his Motion to Reconsider. *See* ECF 341-1 at 9 (noting in Motion to Reconsider that Motion to Change Venue was concurrently filed).

Mr. Khalil's Motion to Change Venue noted that he simultaneously filed a Motion to Reconsider and requested that—if the Immigration Judge ("IJ") grants the Motion to Reconsider and schedules an evidentiary hearing on the 8 U.S.C. § 1227(a)(1)(H) waiver—the IJ transfer the case to New York City where the evidentiary hearing would be held, as that is where Mr. Khalil and his witnesses reside.[3]

---

[1] Under 8 U.S.C. § 1229a(c)(6)(C), a motion to reconsider "shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority." In addition, "(t)he motion must be filed within 30 days of a final administrative order of removal." 8 U.S.C. § 1229a(c)(6)(B). Mr. Khalil complied with both requirements. The IJ issued her final decision and order on June 20 and she committed an error of fact and of law when she overlooked this Court's preliminary injunction barring both the IJ (as a subordinate of Respondent Attorney General Bondi) and DHS from "seeking to remove" Petitioner based on the Secretary of State's determination.

[2] DHS has ten days, until July 13, to file any response to the Motion to Reconsider. Following this Court's preliminary injunction, on June 13, Petitioner's counsel wrote to ask that ICE formally withdraw all reliance on the Secretary of State's determination and the enjoined foreign policy charge. ECF 312-2 at 1, 4. ICE never replied. Meanwhile, it remains the Justice Department's position before this Court, and that of DHS in the removal proceedings, that this Court's June 11 preliminary injunction, ECF 299, does not prevent them from continuing to litigate and pursue Petitioner's removal based on the Secretary of State's determination. *See, e.g.,* ECF 332-3.

[3] As Petitioner's counsel noted at the July 7 hearing, the setting of an evidentiary hearing is the normal course of events where, as here, the respondent in removal proceedings has stated their intent to pursue a waiver under 8 U.S.C. § 1227(a)(1)(H). There is no application form for this waiver. *See, e.g., In re Joan Arturo Castillo a.k.a. Joan Arturo Castillo Montiel*, 2020 WL 1244514 (BIA Jan. 15, 2020) ("There is no specific form to be filed or filing fee for a section 237(a)(1)(H) waiver, and thus, it is not clear which application for relief the Immigration Judge was referring

The EOIR rejection notice states Mr. Khalil has "no pending case." This appears to be a clerical error because the IJ still has jurisdiction over Mr. Khalil's case and his Motion to Reconsider remains pending. The IJ retains jurisdiction unless and until a notice of appeal is filed with the Board of Immigration Appeals. *In re Aviles*, 15 I. & N. Dec. 588, 588 (BIA 1976); *In re Mintah*, 15 I. & N. Dec. 540, 541 (BIA 1975); Board of Immigration Appeals Practice Manual § 4.2(a)(2) ("Once a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case."); *see also* 8 C.F.R. § 1003.23(b)(1) ("An immigration judge may upon the immigration judge's own motion at any time, or upon motion of DHS or the noncitizen, reopen or reconsider any case in which the judge has rendered a decision, unless jurisdiction is vested with the Board of Immigration Appeals.").

Respectfully submitted,

/s/ Naz Ahmad

AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY FOUNDATION
Jeanne LoCicero
Farrin R. Anello
Molly K.C. Linhorst
Liza Weisberg
570 Broad Street, 11th Floor
Newark, New Jersey 07102
973-854-1715

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
Amy Belsher*
Robert Hodgson*
Veronica Salama*
Molly Biklen*
125 Broad Street, 19th Floor
New York, N.Y. 10004
Tel: (212) 607-3300

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Omar Jadwat
Noor Zafar*
Sidra Mahfooz*
Michael K.T. Tan*

CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.
Ramzi Kassem*
Naz Ahmad
Mudassar Toppa*
Shezza Abboushi Dallal*
CUNY School of Law
2 Court Square
Long Island City, NY 11101
Tel: (718) 340-4558

CENTER FOR CONSTITUTIONAL RIGHTS
Baher Azmy
Samah Sisay*
Diala Shamas*
666 Broadway, 7th Floor
New York, NY 10012
Tel: (212) 614-6464

WASHINGTON SQUARE LEGAL SERVICES, INC.
Alina Das*
Immigrant Rights Clinic
245 Sullivan Street, 5th Floor
New York, New York 10012
Tel: (212) 998-6430

---

to as missing from the record in his January 16, 2018, decision."). The Form I-601 Respondents' counsel mentioned during the status conference does not apply to 1227(a)(1)(H) waivers sought by noncitizens within the United States facing removal on misrepresentation grounds, which are subject to a different statutory standard from the one set out in the official Form I-601 Instructions.

Brian Hauss*
Esha Bhandari*
Vera Eidelman*
Tyler Takemoto*
Brett Max Kaufman*
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2500

DRATEL & LEWIS
Amy E. Greer
29 Broadway, Suite 1412
New York, NY 10006
Tel: (212) 732-8805
Fax: (212) 571-3792

VAN DER HOUT LLP
Marc Van Der Hout (CA Bar #80778)*
Johnny Sinodis (CA Bar #290402)*
Oona Cahill (CA Bar #354525)*
360 Post St., Suite 800
San Francisco, CA 94108
Tel: (415) 981-3000
Fax: (415) 981-3003

Counsel for Petitioner

* *Appearing Pro hac vice*